

No. 20099

See Vol. 3354

---

---

**United States Court of Appeals  
For the Ninth Circuit**

---

JACQUES ARLEY and CHARLOTTE ARLEY, husband and  
wife, *Appellants*,

vs.

UNITED PACIFIC INSURANCE COMPANY, a Washington  
corporation, *Appellee*.

---

APPEAL FROM THE UNITED STATES DISTRICT COURT FOR  
THE DISTRICT OF OREGON

---

**APPELLANTS' PETITION FOR REHEARING**

---

ARTHUR S. LANGLEIE  
*Attorney for Appellant*

419 Norton Building  
Seattle, Washington 98104

---

---

THE ARGUS PRESS



SEATTLE, WASHINGTON

FILED

JUL 10 1967

11-14-67



United States Court of Appeals  
For the Ninth Circuit

---

JACQUES ARLEY and CHARLOTTE ARLEY, husband and  
wife, *Appellants*,

vs.

UNITED PACIFIC INSURANCE COMPANY, a Washington  
corporation, *Appellee*.

---

APPEAL FROM THE UNITED STATES DISTRICT COURT FOR  
THE DISTRICT OF OREGON

---

APPELLANTS' PETITION FOR REHEARING

---

ARTHUR S. LANGLEIE  
*Attorney for Appellant*

419 Norton Building  
Seattle, Washington 98104

---



United States Court of Appeals  
For the Ninth Circuit

JACQUES ARLEY and CHARLOTTE ARLEY, husband and wife,  vs.  UNITED PACIFIC INSURANCE COMPANY, a Washington corporation,	<i>Appellants,</i>      <i>Appellee.</i>	} No. 20099
--	--	-------------

APPEAL FROM THE UNITED STATES DISTRICT COURT FOR  
THE DISTRICT OF OREGON

APPELLANTS' PETITION FOR REHEARING

To the Honorable Charles M. Merrill, M. Oliver Koelsch, Circuit Judges, and John C. Bowen, District Judge:

Appellants respectfully petition the Court for a rehearing because the Opinion of the Court in this case, appellants believe, is in conflict with the laws of the State of Oregon and is in conflict with decisions of the Supreme Court. Further, appellants believe that in formulating its opinion herein, the Court did not consider the relationship existing between Mr. Chaney and the Arleys commencing as early as 1958 and continuing beyond October 1962. Nor did the Court consider, appellants believe, the representations or statements made by Chaney or his apparent authority upon which the Arleys relied, as clearly appears from the record herein.

## GROUNDS

1. The Opinion of the Court Misconstrues the Oregon Insurance Code and Implies Erroneously that Broker Status May Exist in the State of Oregon Under Its Insurance Laws.

Under the insurance laws of the State of Oregon there is no licensing of brokers and there is no legal status in the insurance industry in the State of Oregon denominated broker. Under Oregon law all persons dealing in the sale of insurance are either agents or solicitors, and the latter are subagents acting for another agent or agents.

*It is of critical importance, which appellants believe the Court has overlooked, that Mr. Chaney could only have acted as a matter of law in the capacity of an agent and that capacity determined his capacity to bind the insurer in this case.*

The Oregon law was designed by the Legislature of that State to protect the insurance-buying public of Oregon by appropriate regulation and related licensing in the interest of fair dealing, accountability, and to assure that insurance coverage would promptly attach upon the order by the customer to his agent. The relationship has fiduciary responsibilities and the Oregon law was and is intended to avoid a hiatus in insured protection. "The Regulation of Insurance Marketing" Spencer L. Kimball and Bartlett A. Jackson, 61 Columbia Law Review 141, 165, 166.

*La Tourette v. McMaster*, 39 C.St. 160, 248 U.S. 465. 63 L.Ed. 362.

2. The Relationship of Mr. Chaney to the Arleys, His Apparent Authority and His Representations of Coverage Bound the Insurer and/or Estopped the Insurer from Asserting the Lack of Insurance Coverage.

Mr. Chaney first insured the Arleys property in January 1958 and at that time represented that he was an agent for Standard Accident Company (Tr. 60, 61). There were continuing dealings with the Arleys from that time to and beyond October 30, 1962. When Mrs. Arley requested coverage on the Nevada property for the second time Mr. Chaney at no time indicated he was unable to provide insurance, and in fact on inquiry by Mrs. Arley on several occasions Mr. Chaney indicated that insurance was in force, stating specifically that "you are covered" (Slip Opinion, p. 6., Tr. 90, 91, 93, 97, 100).

In summary, the Court has previously decided this matter on the erroneous assumption that the Oregon insurance law permitted the sale of insurance through a system of brokers. The State of Oregon has an agency system, not a brokerage system. *Osborn v. Ozlin*, 60 S.Ct. 758, 310 U.S. 53, 84 L.Ed. 1074.

### CONCLUSION

In view of the Oregon law which requires that the sale of insurance be carried on only by licensed agents and solicitors, and which by definition makes them agents of the insurer, and in view of the relationship existing over a period of some years, Mr. Chaney's apparent authority, and his representations to the Arleys upon which they relied, petitioners respectfully submit that this matter should be reheard in order to obviate substantial error which would con-



fuse and alter the existing insurance law of the State of Oregon and do injustice to petitioners herein.

Respectfully submitted,

ARTHUR S. LANGLEIE

*Attorney for Appellant*

419 Norton Building  
Seattle, Washington 98104



## Appendices







## APPENDIX

### 1

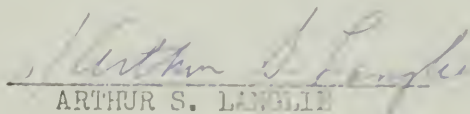
By letter under date of June 30, 1967, the Insurance Commission of the State of Oregon by David J. De Martino, Assistant Attorney General, advised petitioners that under the Oregon insurance laws, "brokers are not licensed and there is no such thing as a broker."

It is to be hoped that the State of Oregon may determine to advise the Court of its view of the Oregon law by separate communication.



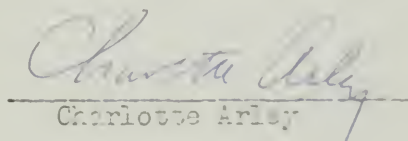
CERTIFICATE

The undersigned counsel for appellants hereby certifies that this Petition for Rehearing is presented in good faith and is not interposed for the purpose of delay.

  
ARTHUR S. LANGILLE

I hereby certify that service of this petition has been made on opposing counsel by sending four copies thereof on this 7th day of July, 1967, in an envelope, with postage prepaid, properly addressed to counsel as follows:

Mautz, Souther, Spaulding, Kinsey  
& Williamson, Kenneth E. Roberts and  
Rockne Gill  
Standard Plaza  
Portland, Oregon 97204

  
Charlotte Arley

